

APPEAL NO. 051027  
FILED JUNE 13, 2005

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on April 1, 2005. The hearing officer resolved the disputed issue by deciding that the appellant (claimant) did not sustain disability from September 20 through December 13, 2004, and has not sustained disability since March 4, 2005. The claimant appealed, arguing that the hearing officer considered an exhibit that had been excluded from evidence and based her determination of no disability on such exhibit. The claimant also argues that the evidence supports a determination of disability. The respondent (carrier) responded, urging affirmance of the disability determination and arguing that the mention of the excluded exhibit in the hearing officer's discussion was harmless error, if it was error at all.

DECISION

Reversed and remanded.

It was undisputed that the claimant sustained a compensable injury. The sole issue before the hearing officer was disability for specified periods of time. The claimant objected to the admission into evidence of two of the exhibits offered by the carrier, specifically Exhibits L and M. The objection was based on the fact that the exhibits were not timely exchanged. The hearing officer sustained this objection and neither Exhibit L nor Exhibit M were admitted into evidence. However, in her discussion of the evidence, the hearing officer specifically referred to Exhibit L and further, stated that she reviewed Exhibit L which "renders it apparent that [the] claimant would have been able to perform his job duties in spite of his functional limitations." It is clear from the discussion that Exhibit L formed a basis for her determination of no disability. It was error for the hearing officer to consider an exhibit that had been excluded from evidence. Therefore, we remand this case back to the hearing officer for consideration of the evidence that was admitted at the hearing and then make a determination of the disputed disability issue.

Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the hearing officer, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is received from the Texas Workers' Compensation Commission's Division of Hearings, pursuant to Section 410.202, which was amended June 17, 2001, to exclude Saturdays and Sundays and holidays listed in Section 662.003 of the Texas Government Code in the computation of the 15-day appeal and response periods.

The true corporate name of the insurance carrier is **COMMERCE & INDUSTRY INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**ROBERT PARNELL  
8144 WALNUT HILL LANE, SUITE 1600  
DALLAS, TEXAS 75231.**

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Margaret L. Turner  
Appeals Judge

CONCUR:

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Thomas A. Knapp  
Appeals Judge

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Robert W. Potts  
Appeals Judge